IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6660 of 1995

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

MAHENDRASINH VALLABHSINH PARMAR

Appearance:

1. Special Civil Application No. 6660 of 1995

MR RC KODEKAR ASSTT GOVT PLEADER for Petitioner No. 1-3

M/S PATEL ADVOCATES for Petitioner No. 1

MR DJ BHATT for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 19/01/2004

ORAL JUDGEMENT

Heard learned AGP Mr.R.C.Kodekar on behalf of the petitioner and learned advocate Mr.D.J.Bhatt for respondent workman.

1. The petitioner - State of Gujarat has challenged the award passed by the labour court, Navsari in Reference No.24 / 1994 dated 1st February, 1995, wherein the order of termination has been set aside and granted reinstatement with continuity of service with 75 % backwages of the interim period. Initially, this Court has passed the following order on 23.1.1996 :

"Mr.Bambhania, Addl.G.P. for the petitioner.

Rule returnable by 12.2.1996. In the meanwhile, the operation of the impugned award dated 1.2.1995 passed in Reference No.24 of 1994 by the Labour Court, Navsari shall remain stayed subject to the provision of Section 17-B of the Industrial Disputes Act. Direct Service is permitted."

Learned advocate Mr.D.J.Bhatt for the respondent has submitted that the petitioner has not complied with the order of Section 17-B of the Act and therefore, the respondent workman had filed recovery application before the concerned labour court and the said recovery application has been allowed by the labour court concerned granting benefits under Section 17-B of the I.D.Act, 1947.

2. Learned AGP Mr.R.C.Kodekar has submitted that looking to the evidence of the petitioner witness Shri Sonajibhai Tijyabhai Vasava, Deputy Executive Engineer in Narmada Division, the workman had completed 240 days continues service in the year 1984 but in the year 1983 and 1985 he has not completed continues service of 240 days. Learned AGP Mr.Kodekar further submitted that initially the respondent workman was working as Workcharge Karkoon, then Workcharge Khalasi and thereafter, as Workcharge Karkoon - cum - Khalasi. In the year 1983, he had completed 221 days, in the year 1984 he had completed 341 days and in the year 1985 completed 221 days and then he was appointed on 29 days basis order by the petitioner. Learned AGP Mr.Kodekar also emphasised that as and when the work was required, as per the necessity orders of appointment were issued in favour of the respondent workman. That the name of the workman was continued in nominal muster roll and monthly payment was made. It is also contended that on 22nd June, 1986 the workman was not in service but the workman has abandoned the services with effect from 22nd

September, 1985. Therefore, the petitioner has not terminated service of the respondent workman. He also submitted that unless the workman had completed five years continues service while attending 240 days in each year, the name of the workman cannot be included in the seniority list. Though, he fairly submitted that at the time of termination, no notice nor retrenchment compensation has been paid to the workman. It is relevant to note at this stage that the project in which the workman was working, was continued when the evidence was given by the witness. One Junior Clerk was examined by the petitioner before the labour court, who was working as Muster Clerk, who admitted that muster register produced at Exh.9/2 and 13 were prepared by him on the basis of original record. Accordingly detailed statement was prepared by the petitioner and the same was placed on record before the labour court. Ultimately, on the basis of the evidence on record before the labour court, the labour court come to the conclusion that the workman had completed continue service of 240 days in the year 1984.

3. It may be appreciated that according to the recent view of the Apex Court, it is not necessary that the workman must required to have completed continued service of 240 days service in preceding year from the date of termination but even if the workman had completed 240 days in the earlier period of service, then also, the same has to be taken into account for compliance of Section 25-F of the I.D.Act, 1947. This view has been taken by the Apex Court in case of M/s U.P. Drass and Pharmaceuticals Ltd. v. Ramanuj Yadav and others reported in 2003 Lab.I.C. 3491. Therefore, the labour court has rightly come to the conclusion that Section 25-F has been violated and looking to the evidence on record as discussed in para-16, the juniors to the respondent were appointed by the petitioner and this fact was not disputed by the petitioner before the labour court. In this background, the clear finding given by the labour court that service of the workman was terminated and it was not the case of abandonment of service and it was not proved by the petitioner. Ultimately, the labour court has granted reinstatement with 75 % backwages of the interim period.

4. Learned AGP Mr.Kodekar has vehemently submitted that the labour court has committed gross error in granting 75 % backwages of the interim period as the labour court has not discussed at all on what basis the workman is entitled to 75 % backwages. As such, there is no discussion at all. According to the learned AGP

Mr.Kodekar, the labour court has not discussed the evidence on this issue led by both the parties. According to the workman, service was terminated in the year 1986 but he raised the dispute after a period of two years and even that aspect has not been considered properly though in the body of the judgment, it has been referred but in final direction, this aspect has been ignored. He, therefore, emphasised that period of delay in raising the industrial dispute, there is no fault on the part of the petitioner and therefore, the petitioner cannot be shouldered with unnecessary liability of backwages of two years. He also submitted that afterall these are daily rated temporary and adhoc employees appointed by the department as and when their services required. There is no permanent benefit given to the workman and he was not having any permanent status at the time when termination order was passed. He also submitted that merely having technical breach of non compliance of Section 25-F, then burden of backwages upon the public body or State Authority which ultimately, burden upon public exchequer. He also submitted that the matter remained pending before the labour court for a period of more than seven years, for that also, there is no fault of the petitioner. Therefore, he submitted that backwages which has been granted by the labour court without any application of mind and without discussing the issue properly and therefore, the order impugned requires to be quashed and set aside.

5. Learned advocate Mr.D.J.Bhatt appearing on behalf of the respondent workman has submitted that once the order of termination is set aside, it is burden upon the employer to prove gainful employment but no gainful employment of the workman has been proved by the petitioner before the labour court. Before the labour court, statement of claim was filed by the workman vide Exh.5 and written statement was filed by the petitioner vide Exh.9. Before the labour court, initially, the said Reference was decided exparte as no one remained present on behalf of the petitioner. That copy of the award has been placed on record vide Exh.22 but thereafter, miscellaneous application was filed being Application No.33 / 1993 which was allowed with the cost of Rs.1000/-. Thereafter, the Reference has been decided on merits by the labour court. Before the labour court, the workman was examined and witness of the petitioner was also examined and certain documents were also produced by both the respective parties. Ultimately, considering the evidence on record and not disputed by the petitioner that the workman had completed 240 days continues service, and in the year 1984 completed 341 days, in the

year 1983 completed 221 days and in the year 1985 completed 222 days and if the weekly holidays and public holidays are included in the years for which total 240 days are not completed, then also, service of 240 days continues service can be said to have been completed by the workman. Thus, in reality, the workman had completed 240 days service and on the other hand, it is not the case of the petitioner that they have complied with Section 25-F of the I.D.Act, 1947, in other words, non compliance of Section 25-F itself is enough to declare the order of termination ab initio void as per the view taken by the Apex Court in case of MOHAL LAL V. BHARAT ELECTRONICS reported in 1981 SC 1253. It requires to be observed that once the order of termination becomes ab initio void, then the workman is entitled to consequential relief being normal relief and he deemed to be in continue service. However, considering this aspect, so far the direction issued by the labour court to set aside the termination order, in my opinion, the labour court has not committed any error as the finding is based on appreciation of the documentary evidence. Therefore, direction of the labour court setting aside the termination order and granting relief of reinstatement with continuity of service, in my view, the labour court has not committed any error while passing such award.

6. So far as the aspect of backwages, learned advocate Mr.D.J.Bhatt has vehemently submitted that earlier the matter was over and award was passed in absence of the petitioner in the year 1993 but thereafter, Misc. Application was filed which ultimately came to be allowed and the main Reference came to be restored and thereafter also, a period of two more years was consumed for disposal of the reference and therefore, the contention on the part of the respondent workman that there was some delay and negligence or inaction on the part of the petitioner, for that, the workman should not suffer. It is also contention of the learned advocate Mr.D.J.Bhatt that it was required to be appreciated from the record that after his termination, junior employees were appointed and the work was also in progress and remained continued.

7. I have given my thoughtful consideration to the submissions made by the learned advocates Mr.Kodekar and Mr.Bhatt appearing on behalf of both the parties respectively on the aspect of backwages part. Fact remains that the workman was not working permanently but he was adhoc and temporary workman working for a specified period and he was required to work as and when

the necessity arisen. That there was no any continue working by the workman with the petitioner. In all, the workman had worked for three years, no doubt, completed continous service of 240 days. It was case of technical breach of non compliance of Section 25-F of the I.D.Act. It also cannot be ignored that the labour court has not discussed the aspect properly and as such, there is no discussion on the issue barring some observations that the workman has demanded full backwages. But there is no recital that whether there was any evidence of unemployment and / or gainful employment from the petitioner or for that, there is no application of mind and no discussion but the labour court has simply granted 75 % backwages and the basic error committed by the labour court in the manner that in the body of the judgment, the labour court has concluded that the service of the workman terminated on 22nd February, 1986 and dispute was referred for adjudication on 23rd March, 1988, means, after a period of two years. This discussion has no reflection in the operative part of the judgment in the form of final direction. One another aspect which cannot be ignored that the matter remained pending before the labour court for more than seven years and there was some fault on the part of the petitioner. The workman had worked for only three years that too on temporary and adhoc and no permanent right of job in favour of the workman and merely technical breach of Section 25-F and the petitioner is State Authority and obviously, ultimate burden on the public exchequer. Therefore, considering the totality of the facts and circumstances of the case, while confirming the award granting reinstatement with continuity of service, if the backwages granted by the labour court is reduced to an extent of 40 % from 75 % to the respondent workman for the interim period with effect from 23rd March, 1988, would meet the ends of justice between the parties. Therefore, the award in question deserves to be modified in the terms discussed above while confirming the direction of reinstatement with continuity of service.

8. In the result, present petition is partly allowed. The direction issued by the labour court in its award in question passed in Reference No.24 / 1994 dated 1st February, 1995 granting reinstatement with continuity of service is hereby not disturbed by this Court and the same is intact and confirmed by this Court accordingly. However, the direction as regards the backwages granted by the labour court to an extent of 75 % is hereby reduced to 40 % of the interim period i.e. from the date of Reference i.e. 23rd March, 1988 till the date of award 1st February, 1995 and same shall be paid by the

petitioner to the respondent workman within two months from the date of receipt of copy of this order.

Rule is made absolute to the extent indicated hereinabove with no order as to costs.

Date : 19.1.2004 [H.K.Rathod, J.]

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